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Commercial Mortgage Company

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

USA Commercial Mortgage Company
06-10725 – Lead Case

USA Capital Realty Advisors, LLC
06-10726

USA Capital Diversified Trust Deed
Fund, LLC
06-10728

USA Capital First Trust Deed Fund,
LLC
06-10728

USA Securities, LLC
06-10729

Debtors.

Jointly Administered

Chapter 11 Cases

Judge Linda B. Riegler Presiding

**EX PARTE MOTION TO EXTEND
DEADLINE TO OBJECT TO CLAIMS
ARISING FROM REJECTION OF
EXECUTORY CONTRACTS OR
UNEXPIRED LEASES**

Date: NA
Time: NA

Affecting:

☐ All Cases

or Only:

☒ USA Commercial Mortgage Company

☐ USA Capital Realty Advisors, LLC

☐ USA Capital Diversified Trust Deed Fund, LLC

☐ USA Capital First Trust Deed Fund, LLC

☐ USA Securities, LLC

The Official Unsecured Creditors' Committee for USA Commercial Mortgage Company¹ moves this Court for an order pursuant to 11 U.S.C. § 1142 and Bankruptcy Rule 9006(b) enlarging the deadline for objections to Claims allegedly arising from the

¹ Upon the Effective Date of Debtors' Third Amended Joint Chapter 11 Plan of Reorganization, the USACM Trust will take over prosecution of this Motion, as the Committee will cease to exist.



rejection by USA Commercial Mortgage Company (“USACM”) of executory contracts or unexpired leases. The deadline for such objections is 30 days after the Bar Date for such Claims, which was 30 days after the date of service of notice of entry of the Confirmation Order. This Motion is based upon the following Memorandum of Points and Authorities and is supported by the Court’s record and the declaration of Edward M. Burr filed this date.

MEMORANDUM

Background

On January 8, 2007, this Court entered its Order Confirming the “Debtors’ Third Amended Joint Chapter 11 Plan of Reorganization” as modified herein (DE 2376). Notice of entry of the Confirmation Order was filed on January 9, 2007, and served on January 11 and 12, 2007 (DE 2387).

Section V.B.3 of the Plan provides that:

A request for payment of any and all Claims allegedly arising from a Debtor’s rejection of executory contracts or unexpired leases, whether rejected under the Plan or by separate proceeding, must be filed on or before such date as the Court has fixed or may fix by express order; provided, however, that if the Court has not entered an order fixing such a date prior to the Confirmation Hearing, all such requests for payment must be made on or before the first business day which is thirty (30) calendar days after the date of service of notice of entry of the Confirmation Order.

Adding 3 days for service under Bankr. R. 9006(f), the Bar Date for rejection Claims was February 13, 2007. In turn, the deadline to object to such Claims is 30 days after the expiration of the Bar Date under Section VII.A.1 of the Plan. Accordingly, the deadline to object to rejection Claims is March 15, 2007.

Debtors and the Committee have identified the persons or entities listed on USACM’s Schedule G as parties to executory contracts or unexpired leases, and the Committee is filing objections to known rejection Claims where appropriate. This Motion addresses a separate problem – it is not possible to determine with certainty in the current environment which Claims in the several thousand proofs of claim that have been filed



1 with the Court are Claims that arguably arise out of the rejection of an executory contract
 2 or unexpired lease. Further, as of this writing, the Effective Date of the Plan has not yet
 3 occurred, and so the USACM Trust does not even exist or have the ability to evaluate
 4 rejection Claims.

5 The Deadline to object to General Unsecured Claims is 90 days after the Effective
 6 Date of the Plan under Section VII.A.1. While that deadline itself may be too short, and
 7 may require extension, it is also a fair deadline for the analysis and potential objection to
 8 rejection Claims.

9 **Discussion**

10 Bankruptcy Rule 9006(b)(1) provides that as except as otherwise provided by the
 11 Rule:

12 when an act is required or allowed to be done at or within a specified period
 13 by the rules or by a notice given thereunder or by order of court, the court
 14 for cause shall at any time in its discretion (1) with or without motion or
 15 notice order the period enlarged if the request therefore is made before the
 expiration of the period originally prescribed or as extended by a previous
 order or (2) on motion made after the expiration of the specified period,
 permit the act to be done where the failure to act was the result of excusable
 neglect.

16 None of the exceptions in Rule 9006(b)(2) or (3) apply here. Accordingly, the
 17 Court may, for the cause shown in this Motion, extend the deadline for objections to
 18 claims arising out of the rejection of executory contracts and unexpired leases. Further, it
 19 may do so on an *ex parte* basis.

20 **Conclusion**

21 The Committee requests that the Court enter its order extending the deadline for
 22 objections to claims arising out the rejection of executory contracts and unexpired leases
 23 until the General Bar Date – 90 days after the Effective Date of the Plan.
 24
 25
 26



Dated March 12, 2007.

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By /s/ RC (#006593)

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